TO: Senator Kevin Murray

FROM: Senator Dick Ackerman

DATE: March 1, 2006

RE: Minority Report

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I. General Comments

There are a number of competing proposals before the Legislature to address California's long-term infrastructure investment crisis, including the Governor's Strategic Growth Plan, the Perata Infrastructure bond proposal, the Assembly Republican Caucus' Pay-As-You-Go proposal and a number of other issue specific bonds. There are specific concerns with each proposal, and general public policy questions associated with any infrastructure investment package that should be considered prior to the issue specific discussions.

Size of the bond

The Governor's Strategic Growth Plan (SGP) provides for the issuance of $68 billion in general obligation (GO) bonds as part of a $220 billion infrastructure package to be implemented over the next decade. Although there is general agreement that California has a significant multi billion dollar infrastructure need the question is do these bond proposals address the highest priority needs, are such projects truly of a nature that are appropriate for statewide

general obligation bonds, and are they sufficient to meet the demands of a growing population?

Priorities
California Republicans believe that investing in infrastructure is one of the state's most important responsibilities and that the dereliction of this duty over the past three decades is the cause of our current infrastructure problems. We cannot resolve this problem, which was three decades in the making, with the passage of one gargantuan bond measure, not matter how large. The solution is a long-term investment program that is targeted to address the state's top priorities first. We believe these priorities are clear: transportation, levee repair, water storage and reformation of the infrastructure construction process.

Bricks & Mortar
Historically, Republicans have unsupportive of bond proposals because of the interest costs associated with long-term borrowing. In certain situations, Republicans have supported bonds for programs associated with actual bricks & mortar projects, where the projects provided a benefit to the entire state long after the bonds were retired.

Republicans believe that any general obligation bond for infrastructure must only be invested in capital projects that provide the highest priority bricks and mortar infrastructure to meet the needs of a growing population and economy.

Pay as You Go
We cannot resolve California's infrastructure problems with a quick-fix solution, regardless of how much we borrow. The only way to address our current situation is by targeting our investments in the most critical areas and setting aside a portion of ongoing revenues to address the other areas of need in the future. This approach will reduce the amount of borrowing the state is required to do today, and by extension the amount of interest we will be asking our children and grandchildren to shoulder.

Specificity
The Governor's SGP locks California into a 10-year infrastructure investment plan. We are being asked to trust that the proposal has taken into account infrastructure needs through the next decade without a clear picture of what will be built with these funds. Is it appropriate to assume that even the best laid plans can provide an accurate assessment of what will be vital infrastructure in five to ten years?

Debt Service
The Governor's proposal makes a number of assumptions about the level of debt that the issuance of these bonds will create. Can California afford to support that level of debt? Furthermore, passage of this proposal seems to

lock California's bonding capacity into the completion of this plan and will severely restrict the ability of future leaders to develop solutions to problems that may arise over the life of these bonds.

Debt Cap
The Schwarzenegger Administration has proposed the creation of a 6% cap on bonded indebtedness. Although the proposal would amend the Constitution to create a specific prohibition against debt service greater than 6% of the General Fund, it would also provide the Legislature and the Governor with the ability to exceed the cap as part of the budget.

With the rising demand for bonds to fund a host of programs, and with the size of the Governor's SGP, Republicans believe it is critical to ensure that government is not allowed to increase the debt burden on future generations beyond a prudent level. It is also critical that the cap be as strong as possible to avoid yearly budget negotiations that allow it to be ignored. However, it is also critical to allow the state the necessary flexibility to waive the cap in the case of natural disasters or emergencies.

Proposition 218
The Schwarzenegger Administration has advocated a circumvention of Proposition 218, the "Right to Vote on Taxes Act" which was passed by the voters in November 1996 with 56.55% of the vote. The context of this recommendation relates to flood management, as they are urging the Legislature to pass the water bond measures for the 2006 and 2010 ballots, along with the enactment of ACA 13 (Harman), which proposes to exempt flood control districts from Proposition 218 voting requirements for fees and assessments.

The Administration has promoted the ACA 13 exemption as a means of avoiding the two-thirds voting requirement that is mandated by Proposition 218. The text of the state constitution and the Howard Jarvis Taxpayers Association (which wrote 218) both specify that only a simple majority of property owners is needed to increase such fees. Regardless of who is right in this debate, the fact is that those who pay the fees should have the right to vote on them.

The Proposition 218 circumvention should be considered in the context of the bond measure which proposes to circumvent Proposition 13 by calling a "tax" a "fee," thus avoiding the two-thirds requirement for legislative approval. Republicans will vehemently oppose any efforts to overturn two of the greatest victories for responsible and responsive government in the 20th century.

II. CEQA Reform

Reform of the California Environmental Quality Act (CEQA) should be the centerpiece of reform when considering the building of infrastructure in California. CEQA has proven to be a costly and time-consuming drain which has been used to derail projects throughout California. Even if the project proponent has jumped through all the hoops, there is still the very real threat of frivolous lawsuits killing an otherwise meritorious project.

SB 1191 reforms
Senator Hollingsworth has introduced SB 1191, which contains a list of specific and comprehensive CEQA reforms. Two of the broad categories include:

- Reduce Delays Caused by Unnecessary Documentation, Streamline the Litigation Process, Clarify CEQA Terms, Increase Certainty in State and Local Review and Clarify Roles and Functions of Lead Agencies. An example of this would be to curb "late hit" litigation abuses and instill fairness in the process by requiring that a person may proceed with a CEQA lawsuit only after raising the specific objection(s) during the agency's proceedings.

- Simplify and streamline cumulative impacts, growth inducing impacts, alternatives analyses, and clarify general plan consistency. New definitions for "cumulative impacts" are contained in SB 1191, which would serve to more appropriately reflect past projects into the baseline condition.

III. Courts

Introduction
In January 2006, Governor Arnold Schwarzenegger released a Strategic Growth Plan, which includes $1.8 billion for court facilities. SB 1163 (Ackerman) would put that bond proposal before the voters.

In particular, SB 1163 would enact:

1] The California Critical Infrastructure Facilities Bond Act of 2006, which authorizes for purposes of financing court facilities, state park system capital assets, mental health hospitals, and certain other state facilities, the issuance of general obligation bonds in the amount of $1,227,000,000; and

2] The California Critical Infrastructure Facilities Bond Act of 2010, which authorizes for purposes of financing trial court facilities the issuance of general obligation bonds in the amount of $1,000,000,000.

The bill requires that all moneys from the 2006 Bond be deposited in the fund are available for appropriation by the Legislature and shall be available for the following purposes: (a) The sum of eight hundred million dollars ($800,000,000) for the acquisition, design, construction, or renovation of trial court facilities; and (b) The sum of four hundred twenty-seven million dollars ($427,000,000) for the development, restoration, or improvement of state park system capital assets; for seismic retrofitting of high-risk state buildings; and for the renovation, improvement, or construction of state mental health facilities.

The 2010 Act directs that the proceeds of bonds issued and sold be deposited in the State Treasury in the 2010 California Critical Infrastructure Facilities Bond Act Fund, which is hereby created. All moneys deposited in the fund are available for appropriation by the Legislature and the sum of one billion dollars ($1,000,000,000) shall be available for the following purposes--capital outlay related to the acquisition, design, construction, or renovation of trial courts facilities.

Background
The Trial Court Facilities Act of 2002 (Sen. Bill 1732) shifted responsibility for California's courthouses from the counties to the state, under the governance of the Judicial Council. This was the final legislative step in a series of court reforms that included the unification of municipal and superior courts into a single trial court of general jurisdiction, the transfer of court funding responsibility from the counties to the state, and, finally, the Trial Court Facilities Act.

In 2002, the Legislature enacted the Trial Court Facilities Act (TCFA) (Escutia, Chapter 1082, Statutes of 2002), which set the basic standards for the turnover of responsibility for court facilities from counties to the state. Since passage of the TCFA, counties and the courts have been working to implement an orderly transfer of existing trial court facilities.

In 2003, SB 655 (Escutia) proposed bonding for court construction. That bill would have authorized the state to issue general obligation bonds for up to $4.146 billion. These G.O. Bonds would have been used for the renovation, rehabilitation, modernization, and the construction of court facilities in the state. SB 655 was held in the Senate Appropriations Committee.

In 2005, SB 395 (Escutia) would authorize bond funds for courthouse construction and renovation although it does not specify the amount that would be raised through issuance of bonds. SB 395 contains provisions to deal with some problems that have been identified by the Administrative Office of the Courts (AOC) since the passage of the TCFA. SB 395 is in the Assembly Appropriations Committee.

Courthouse Conditions

According to the Administrative Office of the Courts (AOC), California's 451 trial court facilities vary considerably in size, age, and condition. The largest trial court facility is the Stanley Mosk Courthouse in downtown Los Angeles with 101 courtrooms. Some rural and mountain areas are served by 1 or 2 courtroom facilities. While a few court facilities are new or quite old and historic, the inventory is generally aging, with 70 percent of all court facilities in California built before 1980. In most cases, these older facilities do not serve the public or the court well, owing to physical condition and designs rendered obsolete by modern court operations and caseload demands. While some counties have invested in their court facilities during the last decade, many counties have not because of insufficient funding and competing priorities.

The AOC reports that California's court facilities are in a state of significant disrepair. Of the state's 451 court facilities, 90 percent require significant renovation, repair, or maintenance. Over 80 percent were constructed before the 1988 seismic codes took effect; 23 facilities are in temporary buildings or trailers; and 25 percent lack space to assemble jurors.

In 2001, the state Task Force on Court Facilities identified critical physical and functional deficiencies in court buildings statewide. The task force recommended a capital construction plan to renovate, improve, or build new replacement facilities to correct these problems upon enactment of Senate Bill 1732.

Serious problems with seismic safety of the existing facilities have surfaced. For example, nearly 60 percent of the total court facilities statewide have a seismic safety rating of Level V, making those facilities ineligible for transfer from county to state under existing law unless provision is made to correct the seismic safety deficiency. While legislation to provide further guidelines for the transfer of these Level V facilities is under discussion, funds would be necessary sooner rather than later to improve seismic protection, regardless of whether the county or the state undertakes responsibility and oversight of the seismic safety correction.

Subsequently, in 2004, the Judicial Council approved the Trial Court Five-Year Capital Outlay Plan, which ranked necessary court facility improvements statewide. The AOC worked with court and county personnel to develop the plan, which includes at least one project for every county and will correct all existing facility problems. All bond proceeds will be used in accordance with the Five-Year Capital Outlay Plan. The priorities set in the plan are based upon the effect on court operations, public and employee risk, risk management and mitigation, funding availability, equity among courts, implementation feasibility, cost/benefit analysis, and planning and design status of major capital improvements.

Funding Adequacy

The proposed $1.8 billion for court facilities would allow the judicial branch to make initial progress on critically needed projects. The capital outlay plan identifies some 201 projects throughout the state. The $1.8 billion will allow significant progress on the most urgently needed projects, with the ability to fund approximately the 40 most critical projects, according to June 2005 costs. At present, the AOC is reviewing its priority methodology in order to determine which buildings need to be addressed and in what order. However, the judicial branch believes that it will still need to pursue additional funding for court facilities beyond what is proposed in the Strategic Growth Plan--the Capital Outlay Plan has a total cost of $9.8 billion. The Judicial Council is assessing the options to fund the remaining need for courts.

Comments

Single Subject

The bond should be restricted to the courts and health facilities and eliminate the parks portion of the bond, which is $ 215 million. The voters have had the opportunity to vote for plenty of park bond funding, both in 2000 (Prop 12 for $2.1 billion) and 2002 (Prop 40 for $2.6 billion). The Legislature should now give voters the opportunity to vote on brick and mortar projects that will keep Californians safe.

Priorities and Criteria
The Five–Year Capital Outlay Plan sets priorities for projects based on these standards: the effect on court operations, public and employee risk, risk management and mitigation, funding availability, equity among courts, implementation feasibility, cost/benefit analysis, and planning and design status of major capital improvements.

Bond proceeds should be used to meet safety standards. The use of the bond proceeds should balance the need for safe court facilities for all Californians consistent with the funds available to improve court facilities. The money should be spent to provide safe court facilities for as many Californians as possible.

Transferring Courthouses
There are 451 facilities that counties will transfer to the state pursuant to the Trial Court Facilities Act. As of January 2006, perhaps as many as five courthouses were in the state's control and management. The deadline for the transfers is July 1, 2007. At the current pace, that deadline will not be met. One of the principal reasons given for the slowness in transferring courthouses is seismic safety concerns and liability. The transfer logjam must be eliminated because the more time that passes before facilities are transferred means that there is more delay before maintenance and improvement of court facilities can occur.

CEQA and Land Use Issues
It would be beneficial to do all we can to reduce delays caused by unnecessary documentation related to land use decisions, especially since the state will be assuming responsibility for many older courthouses. Litigation of issues surrounding, CEQA often lead to project delays. A cost saving reform would be to curb "late hit" litigation abuses and instill fairness in the process by requiring that a person may proceed with a CEQA lawsuit only after raising the specific objections(s) during the agency's proceedings.

Seismic Ratings
One of the issues, which constrain transfers, is seismic safety. The state may not accept the transfer of a building with a seismic safety rating of five or worse. The AOC and the counties have met to attempt to resolve the seismic safety issue. Although there has been much discussion of that problem, no one has solved it. Some suggest that the law be amended to allow the state to accept buildings (rating five or worse) on the condition that the counties remain liable for the consequences of problems caused by the unsafe condition at the time of transfer. The transfer alone would help the counties and courts because it would relieve counties of the funding responsibility of the upkeep and care for the buildings on an ongoing basis. The courts would do a better job of upkeep on the buildings that they control.

Although no one would support accepting unsafe buildings the current impasse prevents court transfers and delays important safety repairs to court facilities. The job of improving the safety of court facilities is too important to delay. Delays in transfers do not make courts safe. It is more important that the job of fixing courts begin, than to continue to keep counties liable for the unsafe condition of the transferred court facilities. Releasing counties from liability would start the process of court transfers and appropriate work on safety problems of court facilities could begin.

IV. Education

Introduction

This section of the minority report responds to the February 22, 2006, Senate Education Committee "Recommendations to Bond Conference Committee." Following the response, are detailed reform elements that should be in the bond if there is agreement that school construction is to be included in the infrastructure bond package.

Background

The Governor's Bond proposes a multiyear authorization of education bonds as displayed in the table below.

	2006	2008	2010	2012	2014	TOTAL
			(dollars in billions)			
K-12						
New Construction	1.700	3.000	2.000	1.700	1.000	9.400
Modernization	3.300	1.200	2.164	2.368	3.068	12.100
small high schools[1]	(0.500)	(0.420)	(0.416)	(0.407)	(0.407)	(2.150)
energy conservation[1]	(0.020)	(0.020)	(0.020)	(0.020)	(0.020)	(1.00)
Charter Schools	1.000	-	0.468	0.466	0.466	2.400
Career-Technical Education	1.000	-	0.468	0.466	0.466	2.400
K-12 SUBTOTAL[2]	**7.000**	**4.200**	**5.100**	**5.000**	**5.000**	**26.300**
Higher Education						
UC	1.733	-	0.800	1.233	-	4.166
med ed/telemed	0.200	-	0.200	-	-	0.400
CSU	1.730	-	0.800	1.233	-	3.763
CCC	1.730	-	0.800	1.233	-	3.763
HE SUBTOTAL[2]	**5.400**	**-**	**2.600**	**3.700**	**-**	**11.700**
GRAND TOTAL[2]	**12.400**	**4.200**	**7.700**	**8.700**	**5.000**	**38.000**

1/ Funding for these set asides is provided from within new construction and modernization amounts.

2/ Totals may not add due to rounding.

Committee Recommendations and Senate Republican Response

Projected Need
The Committee recommends "no more than two general obligation education bond elections," and perhaps only one, in 2006.

Republican Perspective: Final decisions regarding how much general obligation bond funding to authorize and over what period should be made only after full consideration of the total infrastructure package. However, we recognize that the ability to accurately predict precise amounts needed for specific purposes within an education bond is remote.

Charter Schools
The Committee recommends "the provision of up to $200 million from new construction, and up to $300 million from modernization for charter schools facilities . . . pursuant to subsequent legislation."

Republican Perspective: Do not concur, and support a separate set aside and programmatic authorization within the bond bill for three reasons. First, while Prop. 39 (2000) requires school districts to provide "reasonably equivalent" facilities to charter schools within district boundaries, in fact charters often receive "hand-me-down" facilities of questionable "equivalency." Second, a large amount is necessary due to the tremendous growth in charter average daily enrollment (ADA). While non-charter growth for 2006-07 is projected at approximately 0.5 percent, charter school growth will be a much higher eight percent. Third, making programmatic changes in the bond bill, rather than subsequent legislation, will help ensure a truly bipartisan program. (This applies to other Committee recommendations regarding subsequent legislation as well.)

Small High School Program
The Committee recommends the provision of $100 million in additional funding for the existing Small High School Pilot Program in 2006, with $80 million from new construction and $20 million from modernization.

Republican Perspective: Not convinced of the necessity of a small high school set aside. While the small high school concept is popular at present, recently year-round schooling was popular because it was to be an efficient utilization of facilities and pupils would not "lose" prior grade knowledge during a three month summer break. Now, year-round schooling is derided by some as providing unequal educational opportunities, and the state is making efforts to phase it out. Does this same fate await the small high school movement?

Career Technical Education (CTE)
The Committee recommends the provision of up to $500 million for CTE facilities construction in the 2006 bond proposal, pursuant to subsequent legislation.

Republican Perspective: Do not concur, and support a separate set aside and programmatic authorization in the bond bill as proposed by the Governor. The Governor and Legislature increased emphasis on CTE programs last year, approving $20 million for CTE program expansion and integration. (The Governor proposes an increase to a total of $50 million for 2006-07.) Providing appropriate CTE facilities is a necessary component of a fully functioning CTE program.

Energy Conservation
The Committee recommends deleting the set aside of up to $20 million for energy conservation funding in the 2006 bond proposal.

Republican Perspective: Concur, noting the testimony of the Office of Public School Construction (OPSC) that sufficient energy conservation funding authorized in previous bonds remains to last through 2008.

California Environmental Quality Act (CEQA)
The Committee recommends deleting the provisions exempting school district reorganizations from CEQA.

Republican Perspective: Believe that simple, "paper" reorganizations of school district boundaries should be exempt from CEQA review in recognition of the spirit of the law.

Grant Adequacy
The Committee recommends:

1) Increasing the base new construction and modernization grants per the recommendation of OPSC, which is currently studying the issue;

2) Requesting the State Allocation Board (SAB) to consider and implement an additional augmentation for the modernization grant under the Excessive Hardship grant for purposes of ensuring handicapped access; and

3) Authorizing the SAB to make adjustments to the modernization grant for facilities that are identified as "Category 2" (i.e., "not expected to perform as well in future earthquakes as Category 1 building types and that require detailed seismic evaluation") and located less than two kilometers from an active fault.

Republican Perspective, with regard to:

1) The base grant, concur that OPSC should evaluate and report to the Legislature and Governor regarding their findings;

2) Handicapped access, concur that the SAB should evaluate and adjust, as necessary, modernization grants under the Excessive Hardship program in order to ensure appropriate funding for required handicapped access;

3) Modernization grant adjustment for identified seismically at risk facilities, do not concur and instead recommend that OPSC study whether the currently authorized seismic safety modernization adjustment is sufficient, and to adjust through regulation, if necessary.

In addition, we recommend that school district governing boards be given the option of building or modernizing pursuant to either the Field Act or the Uniform Building Code if a school project is located in a seismically stable zone, as identified by the appropriate state authorities.

Eligibility / "Overcrowded Schools"
The Committee recommends:
1) The provision of $1 billion "to specifically address the new construction needs of overcrowded school facilities;"

2) Defining "overcrowded" schools to ensure that the most severely overcrowded schools are prioritized for funding.

Republican Perspective: Do not concur, and note that Prop. 47 and Prop. 55 set aside $4.14 billion specifically for "critically overcrowded schools" (COS), not all of which has been reserved, and almost none of which has been spent.

Joint Use
The Committee recommends authorizing $50 million for joint use projects in the 2006 bond proposal.

Republican Perspective: Republicans are open to language that allows or encourages joint use proposals, which will better utilize community and school resources.

Higher Education
The Committee recommends:

1) Deleting the provisions relating to funding University of California telemedicine/medical education facilities;

2) Allocating funding for the three higher education segments on a 45 percent (California Community Colleges), 30 percent (California State University), 25 percent (University of California) basis;

3) Declaring legislative intent that the public higher education segments report on their program regarding year round operations (YRO) to the budget committees by May 15 each year.

Republican Perspective, with regard to:

1) UC telemedicine/medical education facilities, concur with the deletion of the set aside;

2) The allocation of funding to the segments, recommend a 40 percent (CCC), 30 percent (CSU), 30 percent (UC) allocation, recognizing differences in enrollment in the respective segments;

3) Year round operations, concur on the reporting requirements and recommend the segments fully implement YRO by 2013-14.

Reforms to Be Included in an Education Bond

Policy Issue: Community College Field Act Exemption

Background:

Current law requires California Community Colleges (CCC) facilities to comply with the Field Act, (Sections 17280-17317 and 81130-8119 of the Education Code). This legislation helps ensure the safety of California's school children by mandating that school buildings be able to resist earthquake forces generated by the strongest major earthquakes without catastrophic collapse.

Today the Field Act is administered by the Division of the State Architect (DSA), within the Department of General Services. It gives the State the authority to approve public school construction plans, inspect ongoing new school construction, and inspect existing school buildings for safety.

When the original Master Plan for Education was conceived, it considered K-12 and community college education to be virtually one unit, thereby creating a K-14 public school system. Consequently, CCC have been required to adhere to the Field Act, which was already in place, while the California State University (CSU) and the University of California (UC) have not.

Recommendation:

Exempt Community Colleges from the requirements set forth by the Field Act

Proponents of the Field Act have argued that the State has a responsibility to protect children in school buildings since they are required by the State to attend school. Community College students, however, are part of the higher education system and are not required to attend. Since they are higher education students, community college students should be treated accordingly with respect to the Field Act. If CSU and UC facilities are not subject to the Field Act, then neither should CCC facilities.

Furthermore, the average age of community college students is significantly higher than the average age of CSU or UC students. Considering the Field Act's purpose is to protect California's school children, community college students are the farthest removed.

It is the position of this minority report that the Field Act should not apply to community college facilities. This exemption will reduce both material and planning costs, speed design and construction timelines, and will allow a greater number of facilities to be built.

Policy Issue: Field Act Reform for K-12 Construction

Background:

Current law requires the vast majority of California's K-12 facilities to comply with the Field Act, (Sections 17280-17317 and 81130-8119 of the Education Code). This legislation helps ensure the safety of California's school children by mandating that school buildings be able to resist earthquake forces generated by the strongest major earthquakes without catastrophic collapse.

Today the Field Act is administered by the Division of the State Architect, within the Department of General Services. It gives the State the authority to approve public school construction plans, inspect ongoing new school construction, and inspect existing school buildings for safety.

The Field Act was passed in 1933 in response to the Long Beach earthquake, which destroyed 70 schools. An additional 120 schools were also damaged, among which 41 were rendered unsafe for occupancy and remained closed. The Field Act applies to public school across California.

Recommendation:

Allow local school boards in low-risk areas to choose whether to build under either Field Act standards or Uniform Building Code standards.

California's knowledge of earthquake risks and earthquake zones within the state has increased tremendously since the passage of the Field Act. Many areas have little to no earthquake risk. And yet, school districts in these low-risk zones are required to construct facilities using the same costly method that school districts in high-risk zones use, even though the added requirements are arguably unnecessary.

Allowing local school boards in low-risk areas the choice of safe construction standards that meets local community needs will reduce unnecessary costs and speed construction projects while maintaining an appropriate level of safety for school children. By limiting this flexibility to low-risk areas, high-risk area school projects will continue to be built to Field Act standards.

Policy Issue: Career Technical Education (CTE) and Charter School Unused Funds

Background:

The Charter School Facility Program (CSFP) was created in 2004 by AB 14 (Goldberg). This legislation authorized the State Allocation Board (SAB) to provide funding for the new construction of charter school facilities, or the purchase and retrofit of an existing facility. .

The California Department of Education has concluded, following a needs assessment in 2003, that California's CTE programs face widespread need for equipment and facility upgrades to effectively prepare students for career entry and postsecondary opportunities.

Governor's Bond:

The Governor's bond proposal provides $1 billion for the existing Charter School Facility Program in 2006 and a total of $2.4 billion for this purpose over the next 10 years.

The Governor's bond proposal also creates the Career Technical Education Facilities Program within the larger School Facilities Program. State funds for CTE will be allocated through a competitive grant program, and must have equivalent local matching funds. This proposal provides $1 billion for CTE in 2006 and a total of $2.4 billion over the next ten years.

Recommendation:

CTE and Charter School Funds not apportioned after a specified period of time after voter approval should be subject to reversion to the new construction and modernization accounts upon approval of 2/3 of the Legislature and the Governor. These funds should be reverted in equal portions.

Stipulating that unused funds should revert will generate more flexibility.

Policy Issue: Design Build Extension

Background:

Design-build allows schools to procure both the design and construction of a project from a single entity that is able to provide licensed contracting, architectural, and engineering services.

Under existing law, a school district governing board is required to let any contract for a public project that costs $15,000 or more to the lowest responsible bidder. The ability to use the design-build process was extended to schools by AB 1402 (Simitian) of 2001. This provision will be repealed as of January 1, 2007.

Under existing law, a community college district governing board is required to award any contract for a public project that costs $15,000 or more to the lowest responsible bidder. The ability to use the design-build process was extended to certain California Community Colleges by AB 1000 (Simitian) of 2000. This provision will be automatically repealed as of January 1, 2008.

Recommendation:

The sunset of design-build provisions for both K-12 school districts and community colleges should be deleted.

Design-build significantly reduces the costs and delays of construction. Allowing school districts and community colleges to continue using design-build is a sensible reform.

Policy Issue: Prevailing Wage Threshold Adjustment

Background:

Currently Section 1771 of the Labor Code states that all workers employed on public works projects, except for those projects costing $1,000 or less, should be paid, at a minimum, the prevailing wage.

Recommendation:

Raise the project cost threshold for exemption to $100,000.

School construction costs have increased exponentially since the prevailing wage exemption was added to the labor code in 1976. This threshold should be adjusted to permit school districts to more efficiently utilize taxpayer dollars to construct or improve schools.

Many of these projects, especially modernization projects, are on a small scale and cost less than $100,000. Requiring districts to pay the prevailing wage often raises the costs of a small project to a significant degree and can make a project or project elements cost prohibitive because of the prevailing wage requirement.

Policy Issue: Higher Education Funding Structure

Background:

In the last decade, voters have provided a total of $7.4 billion in statewide general obligation bonds for higher education. In 1996 and 1998, bond funds were allocated for higher education purposes in general and were ultimately allocated in approximately equal amounts in the budget. In 2002 and 2004, Propositions 47 and 55 allocated specific amounts to each segment of higher education: 30 percent for the University of California, 30 percent for the California State University, and 40 percent for the California Community Colleges.

Governor's Bond:

The Governor's proposal allocates specific amounts of bond funds to each segment of the community college. Disregarding the funds for the University of California Telemedicine Program, each segment receives an equal apportionment.

Recommendation:

Allocate the bond funds according to the 2002 and 2004 split: 30 percent for the University of California, 30 percent for the California State University, and 40 percent for the California Community Colleges

California community colleges educate the vast majority of higher education students in California. Thus, it is fitting that this segment receives more funds than its counterparts, as its need is greater.

Policy Issue: Elimination of UC Telemedicine Set Aside

Background:

The University of California has embarked on a program to bring medical services to underprivileged and rural communities. A part of this program is the provision of telemedicine services.

Governor's Bond:

The Governor's proposal allocates $200 million specifically for the construction of telemedicine facilities in 2006 and in 2010.

Recommendation:

Eliminate the specific earmark for telemedicine.

There is no reason that this program should be specifically earmarked in the proposal. The University of California should fund this program from within their portion of the bond if it is among their priorities.

Policy Issue: Year-Round Higher Education Facilities Operation

Background:

Current law states that year-round operation is "a cost-efficient strategy to address future enrollment growth, by avoiding capital expenditure for instructional space, such as classrooms, class laboratories, study space in libraries, and other selected student support service facilities" (Section 66057 of the Education Code, AB 2409 of 2000).

Recommendation:

Mandate that higher education segments being phasing in fully operational year-round academic programs at each campus of their respective systems. Full implementation shall be achieved by the 2013-14 academic year.

This reform will significantly reduce the facilities needs of higher education segments, and will save taxpayers millions of dollars in construction costs. Year-round operation will also increase student access to high demand campuses, and allow students to accelerate their time to degree. This is an important factor as the demand for higher education increases each year.

Policy Issue: Expedite State Architect Review

Background:

The Division of the State Architect (DSA) reviews construction and modernization plans pursuant to the Field Act. This review phase of facilities projects has been a bottleneck with regard to the completion of projects.

Recommendation:

In order to ensure timely completion of school facilities projects, remove the bottleneck that occurs at the DSA by permitting DSA to administratively establish positions to needed to expeditiously carry out its responsibilities.

Policy Issue: Community Planning

Background:

School districts and local governments do not always work closely when planning their respective projects and developments. Disjointed planning can lead to inefficient development of neighborhoods and may result in duplication of effort or the need to revisit projects recently completed in order to ensure the best environment for pupils.

Recommendation:

Permit school districts to utilize bond funding to work with local governments in their community planning processes in order to more efficiently and plan for community development.

Policy Issue: Developer Fee Program Extension

Background:

The 1998 bond agreement established a program for the collection of developer fees to assist in meeting the costs of school facilities. This program permits school districts to assess a fee on new residential development up to 50 percent of the cost of providing school facilities related to that development. This program has been effective.

Existing law essentially sunsets this program in 2006 if a bond is fails. In its place would be a mechanism whereby local governments (rather than school districts) could impose on developers school mitigation fees not subject to the caps in existing law. This process could result in delays to school projects and greatly increased costs to potential homebuyers.

Recommendation:

Delete language which may essentially sunset the current developer fee program.

Policy Issue: OPSC Audit

Background:

The Office of Public School Construction (OPSC), within the Department of General Services, provides staff support to the State Allocation Board (SAB). The SAB is the body responsible for allocating all K-12 school bond funding and implementing the school facilities program.

Recommendation:

Conduct a programmatic audit of the Office of Public School Construction in order to ensure the most efficient and effective school bond allocation process.

V. Public Safety

Introduction

AB 1833 (Arambula), as introduced 1/10/06, enacts, subject to voter approval, the Public Safety Bond Acts of 2006 and 2010 to provide $6.8 billion in general obligation (GO) bond financing for the construction, expansion, renovation, replacement or reconstruction of county jail facilities; the replacement or relocation of facilities that support emergency fire response activities; the development of a new state DNA laboratory; the acquisition, construction, renovation, improvement and deferred maintenance of state adult and youth correctional facilities; the development of state military facilities; and the development, renovation, repair, relocation, and restoration of state public safety facilities.

Few people, if any, will dispute the notion that state correctional facilities are severely overcrowded. Testimony by the Secretary of the California Department of Corrections and Rehabilitation (CDCR) indicates that the state prison system is operating at "190% of capacity". Local jails have similarly faced overcrowding issues that have resulted in the early release of tens, if not hundreds, of thousands of criminals.

Comments

From a basic policy perspective, given the current state of affairs, creating more correctional capacity is necessary in and of itself. This position is undoubtedly strengthened when juxtaposed with some of the alternatives that are being considered, namely early release or community placement of inmates or wholesale changes to California's sentencing laws.

This proposal has many supportable features. First and foremost, it takes an aggressive approach to eliminating overcrowding, both locally and on a statewide basis while providing an avenue to avoid early release. Using local jail beds for parole revocations and inmates with less than 90 days left to serve may ease reception center overcrowding and provide "halfway" custody for those soon to be paroled, respectively. Participating local governments must provide a considerable match in order to receive grant money. All of these ideas seem positive and worthy of further consideration.

Unfortunately, there are many concerns with this proposal. This document will note many of the problems with AB 1833, and, in some cases, provide potential changes to ameliorate these concerns.

Lack of Detail

Between this package and the Governor's Budget, there are four capacity growth proposals, all of which lack specifics. Given the changing nature of the inmate population, and the increased levels of programming

required/expected, we need to know the strategic planning for the entire inmate population, and the data that substantiates the plan.

Los Angeles County
The participation of LA County in this plan is vital, but the language may preclude them from participating. While it has released tens of thousands of inmates, LA County's jail problem has not solely been one of capacity; for some time, county correctional facilities were and in some cases, still are, understaffed. Inasmuch as this measure requires counties to be able to afford safe and effective staffing in order to participate, it seems unclear that LA County would benefit from this proposal since they have trouble staffing the facilities they already own. Since so many inmates come to CDCR from LA County, the fact that LA County may not be involved could substantially decrease the proposal's utility. It is crucial to know how this proposal will ensure LA's participation and that of other counties that may be similarly situated.

County Budgets
In previous jail building programs, some jails were built but never utilized because counties were unable to pay for operational costs. This proposal would add significant jail capacity throughout the state, which would require significant augmentations to county sheriff budgets.

Capital Costs of Beds
Because the program proposed would be based on housing inmates close to the community into which they would parole, these beds could not be placed in remote locations, and instead, would need to be located in population centers where the cost of construction is significantly higher. Additionally, because the proposal would also house inmates at the end of their sentence, and would include all levels of inmates (including inmates paroling from Security Housing Units), the type of cells would have to be higher security. Members may wish to consider whether certain inmates requiring higher security should be excluded from this proposal.

Operational Costs of Beds
By requiring programming that is not currently provided to state inmates, these beds are likely to be significantly more expensive than current local beds, and would likely be even more expensive than current costs for state prison beds.

Population Type Served
It is unclear that the types of prison population contemplated by the proposal (inmates with 90 days or less left to serve or parole revocations) are the best or only types that should be included. Changes to the makeup of the CDCR population may suggest that other types of inmates also be eligible for county housing. The bill seems too restrictive to accommodate changes in CDCR

population types and what is done with them. The bill could be amended to allow CDCR to expand or limit the types of inmates that could participate based on the then-current population needs.

NIMBY/Security
While housing inmates with less than 90 days left to serve may free up bed space and programming, it will undoubtedly raise the ire of affected communities. It is highly unlikely that local governments under pressure from constituents will want high-level offenders coming to their lower-security jails. This also presents potential security issues as some jails may be unable to house violent offenders or would have to make costly improvements to safely house such inmates. The proposal could allow for a county board of supervisors to approve or reject a county's participation in the plan or the type of prisoners that would be allowed.

Population Growth
The Administration is counting on this proposal to meet population growth within CDCR well into the future. Unfortunately, we are lacking the data to show that this proposal encompasses the correct way to respond to that growth. Given the fluidity of the prison population, a plan this complex that is lacking in flexibility may not be workable.

Population Changes/Long-Term Contracts
This proposal contemplates the signing of long-term contracts for state beds at local facilities but we lack the detailed projections of the type of inmates that will be sent to these local facilities. It may be unwise to lock the state into these contracts without knowing future needs, since we will have to make the payments even if we do not have inmates to fill the new beds. It may be worth considering inclusion of an escape clause if the demand for locally-administered state beds dries up.

Debt Limit
By requiring county governments to use lease revenue bonds to be paid by long-term state contracts, this proposal would not be counted against the debt limit that is proposed, even though the state would still be obligated to pay the debt service. This would appear to be counter to the debt limit proposal. The bill should include direction that any long-term contracts resulting from this proposal be counted as GO debt.

Continuous Appropriation
This proposal would continuously appropriate the $2 billion for local jail construction to CDCR and would require the Department to develop rules and regulations governing the parameters of the program and the standards for construction and financing. No mechanism is included in the bill for Legislative oversight or control. The bill should include a mechanism for

Legislative oversight and approval of funding plans to ensure that Legislative powers are preserved.

Conclusion

Given the fact that the alternatives explored by the committee largely consisted of ways to keep or let people out of prison, we feel that some type of construction will be needed to address capacity issues in our state prisons. Currently, prisons are severely overcrowded and are approaching capacity, and current growth trends indicate that absolute capacity will be hit in September 2007. That does not include the fact that there are also inmates in county jails that should be in state prisons. Any bond proposal can not address this short term bed need, and the CDCR should be required to demonstrate how they will manage this projected growth.

The last election authorizing bonds for prison construction was in 1988. Since that time, all prison construction has been accomplished using lease revenue bonds, as these bonds only require legislative approval. Other states also use lease revenue bonds for prison construction. Lease revenue bonds do result in a slightly higher interest rate as they are not backed by the full faith and credit of the state. However, using lease revenue bonds avoids entangling larger infrastructure priorities in the emotional debate concerning prison construction.

VI. Transportation

Background

California's transportation infrastructure is the backbone of the state's economy and an important element in the quality of life of its citizens. In the 1960s, under the visionary leadership of Governors Ronald Reagan and Pat Brown, California built the finest freeway network in the world. Under their leadership, California led the nation in efforts to build a state of the art infrastructure system and that investment has paid dividends for nearly thirty years. As a result of strong leadership and a commitment to the future, California enjoyed the highest quality of life, record breaking population growth and a thriving economy.

Since that time, California's leaders have turned their attention to other issues and have neglected the state's infrastructure system. Despite the fact that the road system built in the 1960s had an expected life span of only 20-30 years, political leaders failed to maintain and expand this important asset to keep pace with population growth.

Between 1980 and 2000, vehicle miles of travel on California's roads increased 97% – from 156 billion miles to 307 billion miles a year, more than ten times faster than new lane capacity was added. During that same period, California's population increased by 42%, from 24 million residents to 34 million while the road system designed to move that population and the goods that are the life blood of our economy, grew by less than 10%. The result is a transportation system in crisis.

Too often the roots of this crisis are blamed on the lack of sufficient funds to pay for needed infrastructure. In fact, Californians pay the fourth highest tax per gallon of gasoline in the country. We rank 49th in our per capita spending on our highways. Our problem is not a lack of funds – but rather misguided policies that have siphoned off gas tax revenues for purposes unrelated to our highways. Any attempts to address the transportation infrastructure crisis through an infusion of additional revenue will never reach its goal unless the underlying public policies that have created the crisis are first addressed.

In addition to regulatory reform it is critical that the Legislature understand the appropriate role of bonds. Bonds are not revenues they are a financing mechanism.

Appropriate Uses for Bonds

As the Legislature grapples with the resulting fiscal paradox of crumbling infrastructure despite record spending and borrowing, it is critical that we address infrastructure problems with fiscal prudence and vision. Accordingly, three principles should be the basis for any bond discussion:

- Bonds should only be used for capital projects with a useful life at least equal to the debt service.

- State bonds should be used only for projects that benefit the entire state. Projects that exclusively benefit local communities should be paid for exclusively by those communities.

- Revenue bonds, not general obligation bonds, should be used for capital-intensive projects that provide direct services to distinct users. A general obligation bond is repaid directly by the state's taxpayers. A revenue bond is repaid by users of a particular project, such as a bridge financed by tolls paid by bridge users.

Concrete & Steel

The primary focus of a transportation bond must be the development of critical transportation infrastructure. Given the over $120 billion in need, any bond must focus on the highest priority projects first. We cannot afford to use this expensive funding mechanism for projects that do not provide a long-term and significant economic benefit.

Several proposed expenditures in the Governor's proposal and in competing proposals are not an appropriate use of transportation bonds. Although these programs all have merit and deserve serious policy consideration, they are not infrastructure that should be paid for with interest over the next thirty years.

- $1 billion for air quality improvements in and around the ports. Clearly an important issue associated with goods movement infrastructure, but it does not meet the concrete and steel test. Air quality improvements at the ports and throughout California must be addressed on an ongoing basis. Furthermore, the expanded capacity will speed the movement of goods through the ports and address congestion issues. As congestion is reduced, the environmental impacts will be reduced and the need for these costly, interest financed programs, will also be reduced.

- $ 1.5 billion for SHOPP. Maintenance is critical, however, it is not an investment in infrastructure that should be paid for over the next thirty years. If we fully fund Proposition 42, there should be ample revenues available to fund the SHOPP program, thereby allowing for the ongoing maintenance and repair of the system.

- $200 million for ITS-TMS. Intelligent transportation and transportation management systems do not represent infrastructure that will outlast the bond payments. These are programs that we should invest in on an ongoing basis as technology develops.

- $200 million for pedestrian & biking facilities. Although these projects are capital projects, their overall value in relation to highly utilized highway projects is questionable. The priority must be to fund highway and street projects, which are by far the most impacted segment of our transportation system.

- Furthermore, there is language in the bond that authorizes the use of bond funds for mitigation of existing infrastructure. Mitigation is an ongoing responsibility associated with infrastructure that must be addressed as each project is developed.

Air Quality

The Governor proposes $1 billion in bond revenues for air quality mitigation in and around the ports. This is an inappropriate use of bond funds because this does not represent infrastructure that will exist after the bonds are retired.

Port facilities programs should be funded through the development of a benefits assessment district comprised of all the beneficiaries of the programs. The Ports provide significant revenues to the state and to local governments, in addition to the consumers and companies that import and export their products through these facilities. All these beneficiaries should unite to address the air quality concerns in proportion to their benefit.

Housing

California is in the midst of a housing crisis that is the result of a serious underproduction of housing. Many legislators and advocates have argued in favor of including housing in the bond to pay for affordable housing programs throughout the state.

California's housing crisis will not be resolved through bond funds. Contributing factors to the lack of affordable housing include regulatory costs, prevailing wage requirements in public housing, the restriction of land and the fees assessed to the development of housing. Rather than seeking additional funds for programs that have failed in the last 20 years to meet the need, California needs to take a bold approach to the housing crisis that allows the market to build housing in all areas and for every segment of the market.

Smart Growth Planning

Although few would argue that there is not a significant value to proper planning for housing development and growth, there is no justification for funding this ongoing responsibility with bonds. Planning is a fundamental responsibility of local government. If they are failing to live up to the responsibility in an appropriate manner, and the state feels compelled to intercede then that decision should be addressed in a policy committee.

Transit

There has been a great deal of discussion in the Senate Transportation & Housing committee about the failure of the Governor's plan to invest in transit systems. Funding for transit systems will be augmented through the protection of Proposition 42, which provides a 20% share for transit projects, significantly higher than the 5% of the population across the state that uses these systems. Any additional subsidy for these systems is only appropriate if it can be proven that they are the most efficient method of alleviating congestion.

In most instances where congestion occurs, the highway and road systems are gridlocked, while the existing transit facilities are not operating at capacity. As a result, it is highly inappropriate to assume that investing in additional transit capacity will have any impact on alleviating congestion.

Regulatory Reform

In addition to these core principles, it is critical that any bond be accompanied by systemic reforms. The single most important element of any transportation bond proposal will not be the revenues, but passage of regulatory reform that provides for the efficient use of whatever revenues are available to meet our transportation needs.

Environmental Streamlining Reforms

- Diverse state agencies are involved in transportation infrastructure projects. Under current practice, each agency undertakes environmental review of a project independently. The result is that each agency must undergo the process and address public opposition, lengthening the time for completion of the environmental documents by months or even years.

  A lead agency should be designated with authority over the permitting for every project. This will ensure that a project need go through only one application process and each agency participates within the lead agency comment process.

- Environmental documents for transportation projects have a limited shelf life. If a project is delayed, the production of environmental documents to obtain appropriate permits must be undertaken again, causing unnecessary delay.

  Once environmental documents are approved and finalized, the documents should cover the project until completed.

- Reduce delays caused by unnecessary documentation, streamline the litigation process, clarify CEQA terms, increase certainty in state and local review and clarify roles and functions of lead agencies. An example

of this would be to curb "late hit" litigation abuses and instill fairness in the process by requiring that a person may proceed with a CEQA lawsuit only after raising the specific objection(s) during the agency's proceedings.

Bureaucratic Reforms at Caltrans

The project development process used by Caltrans is bureaucratic and does not capitalize on the efficiency of private contractors. In order to speed the process, Caltrans should be required to make use of additional contracting where appropriate.

- Prior to authorizing a project for inclusion in the STIP, Caltrans requires the development of a Project Study Report. These reports are preliminary in nature and often take 24-30 months to complete. When local authorities produce PSRs, they retain private contractors to do the work. Private contractors usually take from 10-11 months to complete the same work.

  Current law authorizes Caltrans to use private contractors to complete PSRs. This authority should be amended to require that this work be done by a private contractor.

- The environmental review of a project can often take 24-36 months. During this period, a contractor can undertake preliminary design of the project at their own risk. Having the design proceed concurrently saves significant time and money and is undertaken at the risk of the contractor not the state. We should specifically authorize contractors for state and local projects to design at risk in order to speed the process.

- Caltrans is slow to respond to requests for encroachment permits for projects that make use of Caltrans right of way. This is an unnecessary and bureaucratic delay that costs local authorities significant time and money. Caltrans should be required to assess these permits and make a decision within 45 days. If Caltrans is unable to process the permit request in that time, the permit should be deemed approved.

Design-Build & Design-Sequencing

California has a poor record of completing projects on time and on budget, due in great part to the regulatory climate in which transportation projects are developed. The Governor's Strategic Growth Plan is predicated upon giving Caltrans and local transportation agencies the flexibility to use alternative design and construction methods in order to expedite project delivery.

Under the current system, a public agency awards an architect/engineer a contract to design a project based on subjective criteria of qualifications. This

contract generally accounts for a relatively small portion of the project's total costs—about 5 percent to 10 percent. After detailed project plans and drawings are completed, a contractor is selected to perform the construction work, which accounts for 90 percent to 95 percent of the project's costs. In almost all cases, contracts for construction work are awarded objectively based on competitive bidding.

With design-sequencing, the agency can begin construction on phases of the project as soon as they are 35% designed, rather than waiting for the entire project to be designed. Under design-build, the public agency contracts with a general contractor to both design and build the project. The general contractor in turn subcontracts, through competitive bidding or otherwise, for an architect/engineer and various construction trade work.

Although these new methods are not appropriate for every project, the most important thing is to allow their use whenever and wherever appropriate. The goal of any strategic growth plan must be the development of infrastructure in a timely and efficient manner. In order to achieve that goal, it is critical that state and local agencies are authorized to utilize design-build and design-sequencing in all infrastructure projects.

Labor Compliance
Current law in California requires publicly funded projects to pay prevailing wage – a requirement that has driven up the cost of project delivery. Union and non-union labor should have the same labor compliance requirements in order to allow for fair competition for infrastructure projects resulting in the lowest possible project costs.

Pay as You Go
Infrastructure, like a family purchasing a house, is a capital-intensive proposition that involves a significant down-payment in addition to borrowing. The Governor has proposed significant borrowing and a prospective protection of Proposition 42 revenues as an ongoing investment in what we all agree is a top priority for California's economy and quality of life. Although this protection is a good first step, it is not enough to address California's critical infrastructure needs.

Proposition 42
A constitutional amendment is needed to permanently protect future gas tax funds. Originally, Proposition 42 was to have provided $35 billion to state and local agencies and public transit agencies over the next 20 years. It has been said that we have a spending problem, not a revenue problem. Shamefully, over $5.5 billion of gas tax money has been diverted to address "shortfalls" in the General Fund since the passage of Proposition 42. Any bond package passed this session should end the diversion of Proposition 42 money for non transportation uses.

Specificity
Under the Governor's 10-year infrastructure investment plan the California Transportation Commission is vested with the power to decide which projects will be funded with bond proceeds. The proposal presupposes the adoption of criteria for assessing the relative value of transportation and port infrastructure projects, without any specific details as to what these criteria will be or what our needs may be at the end of the decade.

With the critical importance of delivering congestion relief, the criteria that the CTC will use should be spelled out in the text of the bond and should be weighted toward the expansion of impacted routes. Furthermore, the performance criteria should be applied to regional and system-wide strategies rather than only to specific projects.

Public Private Partnerships
The Governor proposes authorizing state and local agencies to enter into public/private partnerships for the development of transportation projects. This approach to infrastructure development can provide significant projects with minimal public investment.

In 1989, the Legislature experimented in public/private partnerships to build transportation infrastructure (AB 680, 1989) with mixed results. These franchise agreements included non-compete clauses that protected the franchisees' investment, effectively preventing improvements by Caltrans in the same transportation corridor.

The Governor's proposal expands who Caltrans may collaborate with, from solely private entities to both private and public/private entities, allowing for more creative and innovative methods for funding of transportation projects. It expands the types of projects that may be funded through these partnerships. Most importantly, it addresses the conflict in the "non-complete" clause that complicated the state's first experiment with public/private partnerships by providing a mechanism for the state to reimburse the franchisee in the event the state has to build facilities deemed as competitive within the designated corridor.

The use of public/private partnership is controversial, particularly given the history of the program in California. The current proposal authorizes lease agreements lasting as many as 99 years. The non-compete protections under the proposal simply state that any project envisioned in a current transportation plan cannot be impeded. These plans only project out 20-30 years. As a result, a project that becomes necessary to relieve congestion in 40 years that is not currently envisioned would be in violation of the protections in the Governor's proposal.

Furthermore, there is a limited amount of public right-of-way. This land is publicly owned and must be preserved for the expansion of the public road system. If any public/private partnerships are authorized under the bond they must be specifically precluded from using public right-of-way.

The Governor's proposal authorizes the state, the commission or local agencies to operate toll roads after construction costs are paid off. Toll roads should only be used as a construction financing mechanism or to increase the usage of existing HOV lanes, not as a future revenue source. This authority should be specifically precluded.

Goods Movement

Republicans continue to support augmentation of California's goods movement infrastructure as a critical investment in the state's economic future. Senate Republicans believe that it is vital to ensure that system improvements do not simply move the congestion from one place to another, but address the movement of goods from point of entry to point of exit.

In addition, among the most important elements of the California's goods movement infrastructure, and one that most significantly benefits California exports is the air freight system. The list of projects eligible for funding under the goods movement program should be expanded to include cargo heavy airports.

The current proposal provides a centralized approach to project development with limited local and regional involvement in the planning stages. Instead of listing individual projects, regional agencies should be asked to submit regional goods movement programs. The CTC could then choose from these plans what best meets their criteria.

VII. Water

The Governor's Proposal
The Governor's water and flood control bond measure (SB 1166/Aanestad) makes the first significant investments in flood protection and surface water storage in a generation. Over the last decade California voters approved $6.6 billion in bonds labeled as "water" measures according to the Legislative Analyst, but less than 7% of the proceeds went to levees and an even smaller share toward surface storage. In marked contrast, SB 1166 earmarks a 28% share to flood protection and 14% for surface storage.

The Administration's proposed amendment to move $1 billion for surface storage construction from the 2010 to the 2006 bond is good policy for both water and flood control. California must do what it can to bring significant new water supply on-line, as we face a severe shortage in our next drought season. Dams have also played a crucial role in managing Northern California's volatile rivers and restraining floodwaters that can easily overtop levees. Storage projects identified by the CALFED program can create major benefits in both areas.

Funds for levee improvements and repairs should also be "frontloaded" in a way that sufficiently addresses the immediate system needs without relying upon full federal matching funds or the success of a 2010 bond measure.

While sufficient funding for flood control is crucial, serious reforms of our levee management system are just as critical. State and local levee programs are beset by a regulatory process that delays important projects for years and puts human lives at risk. The Legislature needs to streamline the project approval process and provide a definable set of objectives for repairing and upgrading the state-managed system.

Eliminating unnecessary delays will help contain the rising costs associated with flood protection. We are aware of no other government service or public works that has experienced the kind of cost inflation seen recently with levee repair. Given the financial constraints on both the state and the many local governments responsible for managing levees, lawmakers must work not only to streamline the regulatory process but commit to cutting costs and improving project efficiency wherever possible.

We need a renewed focus on channel maintenance, particularly in the state-managed Sacramento River Flood Control Project. This man-made system of weirs and bypasses diverts heavy flood flows out of the rivers and away from populated communities. In the last few years, sediment and vegetation in rivers and bypasses has reduced system capacity significantly, creating urgent problems to which the state has responded in piecemeal fashion. A program

for regular maintenance of rivers, streams, weirs, and bypasses of the Sacramento River project with a reliable budget is desperately needed.

On the water bond, integrated regional water management (IRWM) should be supported only as part of an overall plan to address water needs. It must be linked to surface water storage funding and assurances. Such assurances should include both the authorization and the continuous appropriation of funds for surface storage construction. We believe that sound water policy should address both the supply and demand for water. For too long this Legislature has focused almost solely on demand.

The Water Resources Investment Fund (WRIF) capacity charge contained in this measure is not part of the bond proposal, not necessary for the successful implementation of IRWM programs, and should be eliminated. There is no consensus that this tax is necessary or on the best way to both collect the money and spend it. It bears no relation to the bond package at all and will simply fund existing programs.

Senate Republicans oppose the WRIF not only because of the lack of need, but the charge is a tax, not a fee. WRIF expenditures do not focus on water infrastructure and maintenance, and in fact will be used for many uses that are "public benefits" normally supported by general taxes.

Levee Program
The administration's levee program proposes $210 million in the 2006 bond and $300 million in the 2010 bond for levee repairs, sediment removal, evaluations, floodplain mapping, and the floodway corridor program.

Erosion Repairs
The $50 million for levee erosion repairs contained in SB 1166 is too little, as is the Administration's proposal to raise that amount to $75 million. The U.S. Army Corps of Engineers recently identified over 180 erosion sites along the Sacramento River Flood Control Project including three dozen listed as "critical" threats. In its white paper on flood control, DWR estimated $600 million for repair of these sites.

The bond measure should outline a more aggressive approach to levee repair, anticipate problems with federal funding, and delineate specific objectives for these funds. Senate Republicans support a program targeting known erosion sites and levee deficiencies with funding and fast-track approvals.

Any use of funds for setback levees in this section should be subject to a cost comparison with simple repair of the existing levee.

Sediment Removal
Any water bond should contain funding for sediment removal as a vital component of flood protection. The weirs and bypasses of the Sacramento River Flood Control Project were designed to carry three to five times as much water as parallel sections of the Sacramento River, but key parts of that system are choked with sediment and vegetation. Maintaining these channels is absolutely critical, as even small reductions in the bypass capacity puts significant additional pressure on river levees.

The real problem in our flood channels is a lack of regular maintenance. The design capacity of rivers, streams, and bypasses within the flood control system needs to be monitored and maintained on a regular basis. Instead, the state has taken a piecemeal approach to channel maintenance, waiting until significant problems arise. When they do, nearby levees assume the increased flood risk while state officials search for project-level funding and obtain necessary approvals. The state cannot continue to allow a predictable maintenance issue to fester into major remediation projects.

Channel maintenance and levee maintenance go hand-in-hand. A poorly maintained river channel increases the likelihood of levee erosion by raising and diverting water flows. Raising a levee will not improve flood protection if the water level in the adjacent channel rises with it. Heavy vegetation, trees and sediment can also block the flow of floodwater, creating a pooling effect that saturates levee soils and causes ruptures.

There should be a full evaluation of the current capacity of the Central Valley flood control system, an allocation to sediment removal sufficient to restore the system's design capacity, and a formal system of regular maintenance of flood channels that includes all rivers, tributaries, and man-made structures of the Sacramento River Flood Control Project. The system should be maintained so that future channel clearing does not rise to the level of a "project" where it is subject to CEQA/NEPA and other permit requirements.

We disagree with the department's assessment that sedimentation in the Sacramento River does not impact flood protection, and recommend the Sacramento River be included in this program.

Regulatory Reform
The need for reform of our flood protection programs could not be more evident. Over the last twenty years, the cost of levee repair has risen from an average of $300 per linear foot to $5,000, with some projects approaching $9,000. Regulatory delays have reached five years or more in some cases, doubling and tripling overall costs. These delays are a result of a burdensome process of reviewing, permitting, and mitigating levee projects on a site-by-site basis with the oversight of multiple state and federal agencies. According to DWR estimates, mitigation and permitting have devoured as much as 45% of

the funds for recent levee projects. Additional construction costs resulting from related delays are impossible to calculate but clearly significant.

To one extent or another, both parties have acknowledged the role that the regulatory process plays in reducing available flood funds and delaying projects. Some have argued that federal agencies are largely responsible for regulatory entanglements and costs associated with flood control, so there is little the Legislature can do in this area.

We disagree wholeheartedly. To achieve significant reforms of this state/federal regulatory system, California must take the lead. We also find that state laws and regulations are frequently a hindrance to flood control efforts:

- In its enforcement of the California Endangered Species Act (CESA), the Department of Fish and Game (DFG) currently requires 2-1 and 3-1 mitigation ratios for habitat impacted by levee projects in the Delta. This means that each individual shrub or tree affected or removed must be replaced two and three-fold. Though not as burdensome as the 5-1 mitigation ratios required by the National Fish and Wildlife Service (NFWS), these state ratios nevertheless require a flood agency to purchase additional acreage elsewhere for planting, as well as the need to hire consultants for ongoing monitoring.

- State regulations also present roadblocks to channel maintenance. The $80 million in flood damages along the Mojave River in 2005 were a direct result of a decade of unabated sediment and vegetation accumulation over nearly a decade, caused by the elimination of a local maintenance program. San Bernardino County cited DFG's interpretation of "no net loss" of habitat as a key reason for its discontinuation of channel maintenance.

- The stipulated facts of the Arreola v. Monterey County(122 Cal. Rptr. 2d 38 (App. 6th, 2002) outline DFG's role in obstructing channel maintenance along the Pajaro River and the role of those decisions in a 1995 flood that caused hundreds of millions in damages. When locals applied for a permit to clear the channel in 1991, DFG "issued the permit, but limited its permission to hand clearing and then later halted the work." When its levees overtopped four years later, the Pajaro River was flowing at only two-thirds of its design capacity.

- DWR's own evaluation of five recent levee projects point to hurdles created costs added by CESA and the California Environmental Quality Act (CEQA), including off-site mitigation, as reasons for project delay and mitigation costs that approached 90% of the levee project itself.

- The Legislature has mandated that the Delta Levees Program include a net improvement of wildlife habitat (AB 360/1996). Over the past five years, DWR used 28% of funds in the Delta program to purchase land for habitat restoration.

- Delays and paperwork costs are inherent in a system that requires site-by-site, district-by-district review of flood repairs and maintenance. Both sides in the Legislature acknowledge this problem, though the Majority contends that the system wide permit for the Delta Levees Program is an example of "ample streamlining mechanisms to reduce costs and delays…." However, no such program currently exists for the Sacramento and San Joaquin Rivers, despite various efforts on the local level. State directive is needed in this area.

After the 1997 floods, the Legislature exempted "non-project" levees from CEQA review through the enactment of SB 181 (Kopp). That measure was an acknowledgement that CEQA was an impediment to swift action on our levees. We argue the situation is no less urgent today, and perhaps more urgent because we now have the opportunity to prevent such catastrophes.

Serious reforms are needed to create a workable, more cost-effective system that fixes levees sooner rather than later. The following steps can reduce regulatory "red tape" and contain flood control costs:

- ✓ Establish a single permit or agreement among all regulatory agencies, similar to that for the Delta Levees Program, for flood control repairs and maintenance in the Sacramento and San Joaquin River systems.

- ✓ Set a reasonable "one-to-one" limit, based on habitat affected, for mitigation related to flood control projects. This not only reduces costs, it is an acknowledgement that human habitat is as important as wildlife habitat, and recognizes the severe environmental hazards posed by weakened levees.

- ✓ Codify the Governor's recent emergency actions on our levee system. Critical and potentially critical deficiencies or erosions of our levees should be granted all of the "fast-track" clearances from regulatory reviews and consultations that are allowed after levee failures. This measure should include the 36 critical and potentially critical erosion sites identified by the Army Corps of Engineers and any others identified by DWR.

- ✓ Streamline the CEQA process for flood control and water projects according to the reforms suggested in SB 1191 (Hollingsworth) which will further reduce process delays, limit abusive litigation, and clarify cumulative impacts

- ✓ Eliminate any existing or proposed requirements that a project or program of flood control not only mitigate but *restore* species habitat.

- ✓ Provide clear statutory directives to wildlife agencies emphasizing the significance of flood protection and the need to expedite such projects.

- ✓ Provide an exemption from streambed alteration permit requirements (Fish and Game Code Section 1600) that will allow immediate remediation of existing flood threats statewide.

Other Issues

Poorly Maintained Levees
Poorly maintained levees should remain eligible for repair. DWR should consider maintenance efforts in its prioritization, but should not hold a local agency accountable for problems caused by regulatory delay or obstruction.

Cost-Benefit Analysis
Levee repairs should not automatically receive low priority based solely on a lower cost-benefit ratio, as the Administration's proposal suggests. Such a policy strongly biases the levee program against rural communities. Priority criteria should also include project readiness, availability of both local and federal funding, and consistency with the State Plan of Flood Control.

Cost Sharing on Sediment Removal
Sediment removal in the Sacramento River Flood Control Project is a state responsibility (Water Code Section 8361) and should not require a local cost share.

Flowage Easements
Oppose the unfettered use of levee repair funds to purchase flowage easements on private property, and particularly the use of those funds as a substitute for levee repairs, outside of the existing plan of flood control. If DWR is contemplating changes to the Sacramento River Flood Control System, that policy should be clarified and provided with separate and appropriately earmarked funds.

Flood Control System Subaccount

Lower Limit on Expenditures
Support funding for the state cost share of the projects identified in this section. However, this section allocates $200 million while the specific projects are earmarked at $115 million, leaving up to $85 million for cost overruns or other uses as the Legislature sees fit. We recommend this section be reduced to no more than $125 million, and have additional funds re-directed at key programs such as levee repair and improvement and sediment removal or to specific system upgrades.

City/County Indemnification
This section requires cities and counties to indemnify the state for flood control system improvements. This policy places an unreasonable burden on local governments who cannot possibly afford payments similar to recent flood settlements.

To the extent that DWR wishes to "link" local land-use decisions to flood liability, we find this to be a blunt approach to that problem because it relaxes the necessary pressure on the state to put an end to decades of neglect of federal levees. The best and surest way to address the state's newfound liability is to heed the admonition of the *Paterno* court and establish a "reasonable plan of flood control" that provides the appropriate tools to maintain levees and flood channels.

Delta Subventions and Special Projects
Support project funding in this area to maintain levees in the Delta that are critical to the California's water supply and the safety of local residents. This support is contingent on two proposed changes to the Governor's proposal:

- The $60 million for Delta subventions should be eliminated from both bonds. This is a maintenance program and is therefore an inappropriate use of bond funds.

- Program requirements for ecosystem restoration (AB 360) should be eliminated. Over the last five years DWR spent 28% of the funds designated for Delta flood control on habitat restoration projects.

Flood Control Subventions
The statewide program for flood control subventions is a capital program supported by Senate Republicans. More funding is needed in this area, whether through this bond measure or a match from the General Fund. According to DWR figures, the state already owes $237 million to local jurisdictions for past projects, so the $250 million allocated in the 2006 bond

likely will be exhausted by the end of the calendar year. A proposal to meet the full needs of this program should be outlined as part of this measure.

Floodplain Mapping Program
Consideration should be given to support of the mapping program as a scientific means of assessing flood risk. Mapping also carries with it a number of reasonable federal guidelines related to development within the 100-year floodplain.

Floodway Corridor Program
This program is a conspicuous example of what has become of flood control in this state – a needlessly expensive endeavor that places greater value on land purchases and wildlife set-asides than repairing levees and should be eliminated.

As an example, DWR presented the Natural Resources and Water Committee with details of a project on the Sacramento River at Hamilton City. That project replaces 6.8 miles at a total cost of $44 million. That averages $6.5 million per levee mile, about 50% higher than typical repair costs. The project also took years in the planning and approval stages and is still 2 ½ years from awarding a contract for levee construction, three months after an accompanying re-vegetation program is scheduled for completion.

The Floodway Corridor program is strikingly similar to the former Floodplain Corridor program, under which the state contributed $17.5 million in 2001 to a nonprofit group for the purchase of Staten Island in the Delta. According to recent news reports, the new owners have failed to maintain 70% of the surrounding levees, despite a specific provision in the project agreement to keep sufficient moneys in a trust fund for levee maintenance. This measure contains the same provision, and there is no reason to believe DWR will hold program participants accountable this time.

Integrated Regional Water Management

Regional Water Management Program

Address Both Sides of the Water Equation
While we support local and regional water investments, we do not consider Integrated Regional Water Management (IRWM) or the implementation of the latest California Water Plan, Bulletin 160-05 a panacea for California's water shortage. Growth is coming to this state, and while effective water management is helpful California also needs significant new water supplies to maintain our quality of life. In prior generations, California's political leaders acknowledged their necessary role in guiding the construction of water storage

and conveyance; today, with all of the difficulties facing water development there is an even greater need for such leadership.

Reduce Funding, Mandates
The Administration's proposal to reduce funding for this program from $1 billion to $500 million is the correct thing to do. We also recommend that any funds for IRWM be administered according to the existing IRWM guidelines, and that any potential changes be debated in a policy bill later this year. Water agencies are virtually unanimous in their concern that this proposal is too restrictive and blocks many of the partnerships that spring from local initiative. We are also concerned about the exclusion of levee maintenance and repair in the IRWM program. We will oppose any effort to starve levee maintenance to make a case for new taxes.

Eligibility of Nonprofits
We oppose the eligibility of nonprofit organizations for "applicant" status in the IRWM program. We further recommend that nonprofit participation in such plans be limited to 5% of the regional funding.
Leaving unspecified amounts of money to nonprofits creates an incentive for groups to lobby local water agencies for these funds. Putting together an integrated water plan among multiple agencies is difficult enough; these funds should be as free from outside political influences as possible.

Statewide Water Management Program

Surface Storage Construction Assurances
The Administration has proposed amending SB 1166 to provide a continuous appropriation for surface storage construction funds. while this change is supportable, there are concerns with the Administration's desire to revoke the continuous project authorization. In its response to questions from the Natural Resources and Water Committee hearing of February 14, the Administration expressed a desire to allow "legislative oversight of any final decision to construct any of the CALFED surface storage facilities." Given that such decisions will be left to future Legislatures with no part in this agreement, we have little confidence that these funds will be used for their intended purpose. Senate Republicans recommend DWR be granted both a continuous authorization to participate in construction of one of the CALFED facilities and a continuous appropriation of those funds. SB 1166 should also provide that if no projects are approved, the funds earmarked in this section will not be used for any other purpose.

Frontload Money for Storage
There is strong support the Administration's proposal to shift $1 billion from the 2010 bond to the 2006 bond for construction of surface water storage.

This is a critical need for water supply and more flexible management of water systems.

We also support DWR's stated desire to provide a specific allocation for groundwater storage in this measure.

Science
While there is support for scientific research as a guide to regulatory decision-making, funding this research through a capital-outlay bond is inappropriate. The $800 million for these programs should be eliminated from this measure, less any portion the Administration wishes to identify as capital outlay for desalination.

Ecosystem Restoration
Ecosystem restoration is a lower priority than the public safety considerations and water infrastructure needs identified in this bill. We recommend the $700 million in this section be removed or redirected.

The restoration projects identified in this section are potentially enormous in scope but have yet to be defined in any meaningful way. Costs for San Joaquin River restoration run up to $1 billion but do not provide certainty that the river's anadromous fishery can ever be restored. The Salton Sea restoration study may produce alternatives ranging from $1 billion to $35 billion.

As for the Bay Delta, a recent financial review of the CalFed program shows state dollars supported ecosystem restoration more than any other program element. Still, environmental groups complain of a "crash" in the Delta ecosystem and continue to use litigation to delay water projects. We fail to see how the restoration funds in this bond, unlike the hundreds of millions previously committed by California taxpayers, will improve regulatory certainty in the Delta. We oppose further funding of Delta ecosystem restoration until a complete, independent review of past expenditures can demonstrate direct benefits to water users.

California Water Resources Investment Fund (WRIF)
The California Water Resources Investment Act of 2006 creates the California Water Resources Investment Program and California Water Resources Investment Fund, supported by a new "water resources capacity charge" imposed on every retail water supplier in the state. This new charge is projected to generate $5 billion of revenues over the ten-year period of the Strategic Growth Plan, according to the LAO.

As introduced, the bill delegates the responsibility to increase the fee annually to an unelected State Water Commission. It will be presumed to go into effect unless the Legislature acts, by statute, within 60 days after the receipt of the

recommendations. Since it must happen so quickly, it will take 2/3 of the legislature to reject the "fee" increase.

Fee vs. Tax
The bill specifically states that this charge is not a tax, but should be treated as a "fee." We believe it is a tax. There is no effort to proportion the amount of the levy to any benefits conferred to fee payers. Rather, this charge is levied proportionally to all users statewide for projects that may vary widely in their benefits to different regions and their relation to actual water improvements. There is no voluntary element to the fee – a customer gets hit automatically by virtue of their status as a retail water user.

Senate Republicans have other concerns with the WRIF charge:

- Proposition 13 mandates that tax increases be supported by 2/3 of the Legislature. By calling this "tax" a "fee," it circumvents Proposition 13.

- The state should not be in the business of taxing basic human necessities such as water.

- There is concern among local water agencies that the creation of this tax will compromise their ability to raise their own rates to finance local water resources improvements.

- While the Governor's bond proposal is designed to meet needs over a ten-year period, this tax has no corresponding sunset date and goes on in perpetuity.

- There are no constitutional guarantees that revenue generated by this tax will not be redirected for general fund purposes other than those outlined in the bill.

- The notion that 50% of the tax should go to the State of California only to be returned to local water suppliers is misguided. It is far less costly and complicated to allow local water suppliers simply to retain revenue from their rate base.

- This tax is not relevant to the bond package as it has nothing to do with building infrastructure, but will simply fund existing programs. Bottom line – this tax should be eliminated from the bond proposal.

Proposition 218
Senate Republicans are concerned with implementation problems related to the WRIF tax. According to the Association of California Water Agencies (ACWA):

The bill imposes the legal obligation to pay the tax on the water supplier without specifically authorizing the water supplier to collect the tax. Water supplier's rate increases to collect the tax could be subject to Proposition 218's notice and hearing procedures. Therefore, water suppliers would be forced to hold an election under the provision of Proposition 218 or be at risk of a successful Proposition 218 challenge that could preclude them from collecting the fee while still being under the obligation to pay the tax.

There is also question as to whether investor-owned utilities will be able to recoup the tax owed to the state through their rate structures, and how quickly the Public Utilities Commission would allow that to happen.

Parks Expenditures (SB 1163/Ackerman)
The Governor proposes $215 million in facility and infrastructure improvements for the California Department of Parks and Recreation, as contained in SB 1163 (Ackerman). Democrats indicate that number falls woefully short of the state's needs and are supporting Senator Chesbro's $3.945 billion bond measure, SB 153.

Senate Republicans believe the title of the bond measure in SB 153, "the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2006," is misleading, as it does comparatively little to clean the water or air or create safe neighborhood parks. We question the relative importance of additional government land acquisitions compared to the life-sustaining needs of flood protection and water supply.

While the voters have <u>not</u> had the opportunity in recent years to pay for bonds that significantly improve our levees and water supply systems, they have had the opportunity to vote for plenty of park bond funding, both in 2000 (Prop 12 for $2.1 billion) and 2002 (Prop 40 for $2.6 billion). The Legislature should now give voters the opportunity to vote on brick and mortar projects that will keep their families safe.

Traditionally, a department's facilities repair and improvements costs are funded in an annual budget allocation. This allocation would provide for minor facilities repairs and smaller scale capital outlay projects. Major capital outlay and rehabilitation projects have typically been funded by budget augmentations.

In the case of the Department of Parks and Recreation, bond funds (i.e. Prop. 12, Prop. 40) have been used for both minor and major maintenance projects because the department's facilities repair needs outpace the annual budget appropriations. This is primarily due to the Legislature's policy of acquiring land without consideration for the need to maintain the properties.

Of California's 101 million acres of land, approximately 52 million acres are owned by state local and federal governments, and another 27 million acres is set aside for farmland. This leaves only 22 million acres for housing, schools, businesses, and other development. Rather than developing more parks and public access ways, any park bond ought to prioritize funding for the most critical facility repairs and code upgrades, with no additional park development until the State can feasibly fund maintenance on its existing park properties.